




IN THE LAND CLAIMS COURT OF SOUTH AFRICA  
HELD AT RANDBURG

CASE NO: LCC 46/2021

Before the Honourable Flatela J

<b>DELETE WHICHEVER IS NOT APPLICABLE</b>	
(1) REPORTABLE: YES / NO	
(2) OF INTEREST TO OTHER JUDGES: YES / NO	
(3) REVISED: YES / NO	
12/08/2024 DATE	 SIGNATURE

In the matter between:

**RHEEDERPLASE (PTY) LTD**

Applicant

and

**M.E. MONTSIOA**

First Respondent

**THE MINISTER OF RURAL DEVELOPMENT  
AND LAND REFORM**

Second Respondent

**THE MEMBER OF EXECUTIVE COUNCIL FOR  
HUMAN SETTLEMENTS FOR THE FREE STATE PROVINCE**

Third Respondent

*In re the action between:*

**RHEEDERPLASE (PTY) LTD**

Plaintiff

and

**Ms. ALINA NTSELE**

First Defendant

**Ms. LYDIA NTSELE**

Second Defendant

**THE NALA LOCAL MUNICIPALITY**

Third Defendant

**THE MINISTER OF RURAL DEVELOPMENT  
AND LAND REFORM**

Fourth Defendant

**THE MEMBER OF EXECUTIVE COUNCIL FOR  
HUMAN SETTLEMENTS FOR THE FREE STATE PROVINCE**

Fifth Defendant

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**ORDER**

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The application is dismissed with no order as to costs.

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**JUDGMENT**

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**FLATELA J**

[1] This is an opposed interlocutory application instituted in terms of Rule 37 of the Rules of this Court. The applicant seeks final relief in the form of a *mandatory interdict* against the First Respondent, a Project Officer of the Department of Rural Development and Land Reform who compiled a report as required by section 9(3) of the Extension of Security of Tenure Act 62 of 1997 ("ESTA or the Act").

[2] In the main action, the Applicant is seeking an eviction of the First and Second Defendants and that the State Defendants in the main action be ordered to provide the First and Second Defendant alternative accommodation, alternatively emergency housing. The main action is not defended.

[3] As required in eviction proceedings, the Registrar of this court addressed a letter to the offices of the Department of Rural Development and Land Reform, the

Second Respondent, requesting that a Probation Report be submitted by the Second Respondent in terms of 9(3) of ESTA within reasonable time. The report was to deal with the (a) availability of suitable accommodation to the occupiers, (b) how an eviction will affect the constitutional rights of any affected persons, including the rights of the children, if any, to education, (c) pointing out any undue hardships which an eviction would have caused the occupier and (d) on any matter as may be prescribed

[4] The First Respondent compiled the report and recommended that an eviction order should not be granted as the defendants do not have suitable alternative accommodation and that in the event the Court is of the opinion that granting the eviction would be just and equitable, it should order that alternative accommodation first be secured before execution of the order. Moreover, she recommended that the Court should order the Applicant to make a meaningful contribution towards the securing of alternative accommodation for the First and Second Defendants and their dependents.

[5] Aggrieved by the factual and legal conclusions reached by the First Respondent, the Applicant addressed several correspondences to the Second Respondent seeking specific information about the First Respondent, *inter alia* whether the First Respondent was duly appointed as a Probation Officer in terms of section 1 of the Probation Services Act 116 of 1991. The Applicant also requires the First Respondent to depose to an affidavit setting out exposition of how she arrived at her conclusions, the methodology undertaken in obtaining the information, and whether some relevant persons were interviewed or not for this or that other reason, to name just a few. The Applicant also sought the Second Respondent's views on the obligations imposed by ESTA and a comment on the Nala Municipality's attitude to the Constitutional Court case of *Baron and Others v Claytile (Pty) Limited and Another*.<sup>1</sup>

[6] Not satisfied with the responses of the Second Respondent, the Applicant instituted this application, *a mandamus*, seeking final interdictory relief. The orders sought are wide; they are fully set out in the notice of motion, but I summarised the orders sought as follows:

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<sup>1</sup> *Baron and Others v Claytile (Pty) Limited and Another* 2017 (5) SA 329 (CC) (13 July 2017).

- i. The First Respondent is to file an affidavit dealing with her appointment as a Probation Officer; alternatively, the Ministerial determination as provided in terms of section 9 (3) of ESTA;
- ii. The First Respondent must file an exposition of the steps taken in order to determine the issues listed in section 9(3)(a) to (d);
- iii. Copies of all correspondence exchanged with the municipality pertaining to the provision of alternative housing for the occupiers;
- iv. Details of all or any application by the occupiers for a grant as envisaged in Section 4 of ESTA
- v. an exposition of the factual and legal basis for the First Respondent's recommendations that should the eviction be granted; the Applicant should be ordered to make a meaningful contribution towards securing alternative accommodation for the occupiers.

### **The Parties**

[7] The Applicant is Rheederplase (Pty) Ltd, a company registered in accordance with the statutes of the Republic of South Africa. The Applicant is the registered owner of the farm known as Sandy Lands 260, district Wesselsborn, Free State Province ("the property or farm"). In the main action, the Applicant seeks eviction of the First and Second Defendants, who are occupiers as in terms of ESTA.

[8] The First Respondent is Masello Montsioa, an adult female employed as a Project Officer in the employ of the Second Respondent, Lejweleputswa District office, Free State. The Second Respondent compiled the report in terms of section 9(3) of ESTA.

[9] The Second Respondent is the Minister of Rural Development and Land Reform, and the Third Respondent is the Member of the Executive Council (MEC) for Human Settlement for the Free State Province.

[10] Prior to the launching of the application, the applicant addressed various correspondence to the Second Respondent and they are as discussed bellow

[11] On 7 April 2022, the Applicant, through its legal representatives, addressed a letter to the Department of Agriculture, Land Reform and Rural Development (“The Second Respondent”) requesting, *inter alia*, the following information:

- i. Confirmation on whether or not the First and the Second Defendants have any other family members who are residing elsewhere and who hold a lawful duty to maintain them insofar as they are unable to provide for their personal needs.
- ii. Referencing the Constitutional Case of *Baron v Claytile*, the Applicant sought the Department's feedback on the Nala Municipality's attitude to the matter and its duties as outlined therein to be delivered together with the Department's considerations of their obligations in terms of section 4 of ESTA.
- iii. The Applicant stated that the Probation Officer's Report was silent on these issues and that they are of the view that they have a bearing on the matter. Furthermore, the Applicant advised the State Attorney that the Applicant does not hold any lawful duty to maintain the First and Second Defendants nor to provide them with social housing. However, if it should be the intention of the State to make use of the Applicant's property to provide social housing, then the Applicant sought an undertaking whether the State would compensate it for the duration of occupation.
- iv. To drive the point home, the Applicant stated that if the State's duty to provide social housing has shifted to a private landowner, then the state ought to compensate the private landowner. The Applicant argued that none of these issues were dealt with in the Probation Officer's Report, and it ought to do so adequately.

[12] The State Attorney replied on 21 June 2022, confirming the following:

- a. The Department was not aware of anybody who holds a legal duty to maintain the First and Second Defendants.
- b. It is satisfied with the report's content and will respond to requests from this Court to amend it if necessary.
- c. The State Respondent declined to comment on the Municipality's attitude to the *Baron v Claytile* matter. However, it confirmed that the Municipality has the duty to provide housing.
- d. Furthermore, that state attorney confirmed that the Second Respondent will pay compensation if ordered to do so by this Court.

[13] On the same day, 21 June 2022, the Applicant's attorneys addressed further correspondence requesting the following information:

- i. Provide the name and appointment letter of the Probation Officer who was appointed in terms of the Probation Services Act 116 of 1991 to compile the Report;
- ii. Alternatively, if the Officer was not appointed in terms of the said legislation, then the Department must provide a copy of the Ministerial determination as provided for in terms of section 9 (3) of ESTA;
- iii. A copy of the appointment of any person other than a qualified Probation Officer referred to above who was responsible for drafting the Report;
- iv. A written confirmation whether or not the author of the report (i.e. the First Respondent), as part of the issues prescribed in section 9 (3)(a) to (c) of ESTA, interviewed the occupiers in order to establish whether or not they have relatives residing elsewhere that are liable in terms of the common law or by statute to maintain and provide accommodation for the First and Second Defendants; and if this was investigated, for the Department to

opine on the matter in writing rather than just hold it as a matter of general knowledge;

- v. All correspondence exchanged with the Municipality pertaining to the provision of alternative housing for the occupiers;
- vi. The Department was also to disclose whether any, if none all, of the occupiers had applied for a grant as envisaged in section 4 of ESTA. And if so, then reasons why the grant would not enable them to relocate themselves elsewhere;
- vii. But if section 4 (the grant in terms of ESTA) was not considered before the preparation, draft and submission of the Probation Officer's Report to the Court, then written reasons for such a failure;
- viii. Furthermore, finally, the reasons with regard to the factual and legal basis for the First Respondent's view (with regard to section 6 (2) of the Constitution), why is that it is the Applicant that holds a duty to fulfil the State's obligation to provide access to social housing.

[14] The Applicant also stated that if the Department is unable to provide the answers hereto or is unwilling to do so, then it must furnish the name of the Probation Officer who compiled the Report, their employment particulars and where they are to be found to secure their attendance in Court to testify to the issues not canvassed in the Report.

[15] The State Attorney replied to the Applicant's demands and advised the Applicant's attorneys that the Second Respondent has complied with its duties and will act on directives of this Court if requested to do so, and not on the demands of the Applicant.

[16] Aggrieved by the response, the Applicant instituted this application.

## Issues for determination

[17] The Applicant's pleadings were not a model of clarity on the issues to be determined by this court. In their statement of agreed facts and facts in disputes filed in this Court on 15 January 2024, the Applicant listed the at least eleven issues to be determined by this court. They are listed as follows:

- a. Whether or not the First Respondent was duly appointed to compile the report and whether or not the first responded truly investigated the issues she was supposed to investigate in terms of Section 9(3) (a)-(d) of ESTA;
- b. Whether the First Respondent followed any of the procedures when she collected the information she relies on and set out as facts in the report, and whether she failed and refuses to address her appointment to compile the report.
- c. Whether the First Respondent was appointed as Probation Officer contemplated in Section 1 of Probation Services Act 116 of 1991. PSE, to compile the relevant reports in terms of Section 9(3) of ESTA
- d. Or whether the First Respondent was not appointed as probation officer contemplated in section 1 of PSA, as provided for in section 9(3) of ESTA and whether the first respondent's appointment was in accordance with the ministerial determination in question.
- e. Whether the First Respondent was duly qualified and competed to file the report;
- f. Whether the First Respondent has authority to represent the Second Respondent in the present application;
- g. Whether the First Respondent refused to provide the applicant with the reasonable information requested which conduct infringes on the applicants' rights to state its case in the main action;
- h. Whether or not the Applicant should have taken the report on review if it is not satisfied with the content of the report;



- i. Whether or not the Applicant should have resorted to the Promotion of Access to Information Act to seek the information which it is now seeking this application.
- j. Whether or not the Second Respondent provided the Applicant with the information requested in the letter of 7 April 2022;
- k. Punitive cost order.

(Not only strictly limited to the aforementioned issues, and as more fully raised in the application to be heard, together with the founding affidavit by the Applicant and the applicable annexures, the applicants replying to affidavit and the Applicants' concise heads of argument)

[18] From the statement of the agreed facts, it was not clear to court what relief was sought in this application. After enquiring from the Applicant's counsel, the Applicant's counsel stated that the Applicant is seeking final relief in the form of mandamus against the First Respondent and a punitive cost order against her in her personal capacity.

[19] The issues to be determined by this court is whether to determine whether the Applicant has satisfied the requirements for granting of an interdict.

[20] The three requirements for a final interdict are trite, they are (a) a clear right; (b) an injury actually committed or reasonably apprehended; and (c) the lack of an adequate alternative remedy. The Constitutional Court confirmed these requirements in *Masstores (Pty) Limited v Pick n Pay Retailers (Pty) Limited*<sup>2</sup>.

### **Relief Sought**

[21] The Applicant contends that it is entitled to proceed with a request for default judgement in terms of Rule 58 of the Rules of this Court. Relying on Rule 58(5), which provides that 'if any party applies for the default judgment, he or she must present evidence necessary to support the judgment', the Applicant contends that if it proceeds to apply for the default judgment with the scant information provided by the First Respondent, the Applicant will not be able to address the contents of the Probation

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<sup>2</sup> 2017 (1) SA 613 (CC), para 8

Report and the court might come to the conclusion that it is not just and equitable to grant eviction .

[22] The Applicant contends further that the Second Respondent has made it clear that it will only amend the Probation Report if ordered to do so by this Court; the Applicant has no other alternative remedy but to institute this application. The Applicant further contends that without the prerequisite information, the Applicant will be unable to state its case in the main application. The Applicant avers that it has a clear right to deal with the contents of the Report and that, without this information, it is unable to do so. Furthermore, Applicant contends that it will suffer irreparable harm in that the granting of the eviction order is at the discretion of this Court after having considered all relevant factors and considerations into account, including the Probation Officer's Report and without this information, the Applicant is at risk of failing to convince this Court to grant the relief sought.

### **ESTA provisions**

[23] Before dealing with whether the Applicant has established the requisite of final interdict, it is prudent that I first deal with the provisions of ESTA, which deals with the procedure of Eviction. The relevant section is section 9, which deals with the general limitations on evictions.

[24] Section 9 provides as follows:

#### **9. Limitation on eviction**

- (1) Notwithstanding the provisions of any other law, an occupier may be evicted only in terms of an order of court issued under this Act.
- (2) A court may make an order for the eviction of an occupier if—
  - (a) the occupier's right of residence has been terminated in terms of section 8;
  - (b) the occupier has not vacated the land within the period of notice given by the owner or person in charge;
  - (c) the conditions for an order for eviction in terms of sections 10 or 11 have been complied with, and
  - (d) the owner or person in charge has, after the termination of the right of residence, given—

- (i) the occupier;
  - (ii) the municipality in whose area of jurisdiction the land in question is situated, and
  - (iii) the head of the relevant provincial office of the Department of Rural Development and Land Reform, for information purposes,
- not less than two calendar months' written notice of the intention to obtain an order for eviction, which notice shall contain the prescribed particulars and set out the grounds on which the eviction is based, Provided that if a notice of application to a court has, after the termination of the right of residence, been given to the occupier, the municipality and the head of the relevant provincial office of the Department of Rural Development and Land Reform not less than two months before the date of the commencement of the hearing of the application, this paragraph shall be deemed to have been complied with.

(3) For the purposes of the subsection (2)(c), the Court must request a probation officer contemplated in section 1 of the Probation Services Act, 1991 (Act 116 of 1991), or an officer of the department or any other officer in the employment of the State, as may be determined by the Minister to submit a report within a reasonable period –

- (a) on the availability of suitable alternative accommodation to the occupier;
- (b) indicating how an eviction will affect the constitutional rights of any affected person, including the rights of children, if any, to education;
- (c) pointing out any undue hardships which an eviction would cause the occupier and
- (d) on any other matter as may be prescribed.'

[25] In order to fulfil the requirements of ESTA, the Court is enjoined to request a report from a Probation Officer contemplated in section 1 of the Probation Services Act 116 of 1991 or an officer of the Department *or* any employee in the employment of the State, as may be determined by the Minister.

[26] In her answering affidavit, the First Respondent stated that she employed as a Project Officer in the Department and in her capacity as a Project Officer, she was authorised to compile the Report. The First Respondent further asserts that as an

employee of the department, she is duly competent to compile the report in terms of section 9 (3) of ESTA. The First Respondent contends that the Report is not her personal report but rather an official report of the Second Respondent.

[27] The Applicant takes this argument further. It contends that *'it is in any event, it is not known what the qualifications of the First Respondent as a "Project Officer" in the employment of the Department entail, and whether or not she is qualified and competent to compile the Report'*.

[28] The Applicant requires , the First Respondent to provide within seven days of this Court's order, an affidavit in which the First Respondent comprehensively deals with her appointment letter as a Probation Officer in terms of section 1 of PSA, to compile the Report and , If the First Respondent was not appointed as a Probation Officer as contemplated by section 1 of PSA, to provide the Ministerial determination to prove that the First Respondent appointment in accordance in terms of the Act .

[29] The relief sought against the First Respondent is incompetent. It is common cause that the Registrar of this court requested the report in terms of 9(3) to be submitted by the office of the Second Respondent and the report was filed. The First Respondent explicitly states that she was not appointed as a Probation Officer in terms of the PSA but as an Officer of the Department to compile a report in terms of section (9) (3). The Report itself does not purport to be the "Probation Officer's Report. The report compiled by the First Respondent is titled "REPORT IN TERMS OF SECTION 9(3) OF THE EXTENSION OF SECURITY OF TENURE ACT, NO 62 OF 1997. Nowhere in the report does the First Respondent states that the report is that of a Probation Officer.

[30] The Applicant's incessant requests for the appointment letter authorizing the First Respondent to compile the Report is misplaced. As stated , the report itself does not purport to be that of a Probation Officer as contemplated in terms of section 1(1) of the Probation Services Act 116 of 1991, which provides that unless the context dictates otherwise, *'(i) an "authorized probation officer" means a probation officer authorized or directed by the Minister to perform any function entrusted to an authorized probation officer [in terms] of the Act* Moreover,.' in section 1(1)(x) of PSA,

*a Probation Officer" means a person who complies with the prescribed requirements and who has been appointed under section 2.'*

[31] It is worth mentioning that PSA was enacted: "to provide for the establishment and implementation of programmes aimed at the combating of crime; for the rendering of assistance to and treatment of certain persons involved in crime; and for matters connected therewith. Nevertheless, the Ministerial determination of such an officer prescribes under section 2(1), which provides:

**2. Appointment of probation officers**

'2(1) The Minister may appoint as many persons as he may deem necessary as probation officers to exercise the powers and to perform the duties conferred or imposed by or under this Act or any other law on a probation officer'.

[32] What becomes apparent from the Act is that a Probation Officer is a person appointed under section 2 of the Act *to exercise the powers and to perform the duties conferred or imposed by or under this Act or any other law on a probation officer.'* **(My emphasis).**

[33] It is from the provision '**or any other law on a probation officer'** that empowered the court to request a report from the Probation Officer in terms of section 9(3) of ESTA, However the court did not request a Probation Report in terms of section rather, the court addressed a request to the Second Respondent's office.

[34] It is true that these reports have been referred to as "Probation Reports "by the litigants and by the Courts. I think it was a language adopted by the Second Respondent's officials and the Court and it became a norm to call these reports "Probation Reports ". My view is therefore that it is cosmetic to call this Report "Probation Officer's Report" because the court is enjoined to request one of the three functionaries to file a reports, calling these reports in terms of section (9)(3) of ESTA "Probation Report is cosmetic, and the persons who may be appointed to compile the Report for purposes of section 9(3) of ESTA are functionaries. In any event the report compiled by the Second Respondent is not the Probation Report.

## Was the First Respondent Authorized to Compile the Report?

[35] The Applicant contends that *'if the author further and blatantly refuses to answer reasonable questions ... pertaining to her appointment to compile the report, one is unable to determine the value or validity of the Report or its content.*

[36] The Second Respondent has confirmed that the First Respondent compiled the Report on behalf of the Second Respondent, acting in her capacity as Project Officer who was tasked to compile the Report. The Second Respondent advised the Applicant's attorneys that the Second Respondent were satisfied with the report and that it will only amend it when directed by this court.

[37] The Applicant contends that report can only be compiled by a Probation Officer contemplated in section 1 of the Probation Services Act 116 of 1991 or an officer of the Department *or* any employee in the employment of the State, as may be determined by the Minister. It contends, *'it could never have been the intention of the Legislator to provide in section 9 (3) of ESTA that a person is automatically authorised, and therefore also competent, to compile and to submit the Report merely because of his/her appointment by the Department.*

[38] The Applicant contends that on proper interpretation of the Act, it should read thus, it can either be a Probation Officer as contemplated in section 1 of the Probation Services Act 116 of 1991 or an officer of the Department *or* any employee in the employment of the State, as may be determined by the Minister. The Applicant contends further that the Act requires a person in the employ of the Department or any other officer in the employment of the State as determined by the Minister. The Minister must provide determination.

[39] The test to statutory interpretation is well embraced in our law from the dictum in *Natal Joint Municipal Pension Fund v Endumeni Municipality*<sup>3</sup> where Wallis JA said:

'Over the last century there have been significant developments in the law relating to the interpretation of documents, both in this country and in others that follow similar rules to our own. It is unnecessary to add unduly to the

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<sup>3</sup> *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA) (16 March 2012)

burden of annotations by trawling through the case law on the construction of documents in order to trace those developments. The relevant authorities are collected and summarised in *Bastian Financial Services (Pty) Ltd v General Hendrik Schoeman Primary School*. The present state of the law can be expressed as follows. Interpretation is the process of attributing meaning to the words used in a document, be it legislation, some other statutory instrument, or contract, having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon its coming into existence. Whatever the nature of the document, consideration must be given to the language used in the light of the ordinary rules of grammar and syntax; the context in which the provision appears; the apparent purpose to which it is directed and the material known to those responsible for its production. Where more than one meaning is possible each possibility must be weighed in the light of all these factors. The process is objective not subjective. A sensible meaning is to be preferred to one that leads to insensible or unbusinesslike results or undermines the apparent purpose of the document. Judges must be alert to, and guard against, the temptation to substitute what they regard as reasonable, sensible or businesslike for the words actually used. To do so in regard to a statute or statutory instrument is to cross the divide between interpretation and legislation. In a contractual context it is to make a contract for the parties other than the one they in fact made. The "inevitable point of departure is the language of the provision itself", read in context and having regard to the purpose of the provision and the background to the preparation and production of the document.<sup>4</sup> (internal footnotes omitted).

[40] And Section 39(2) of the Constitution is instructive when interpreting any legislation. It provides:

#### **Interpretation of Bill of Rights**

'39 (2) When interpreting any legislation and when developing the common law or customary law, every court, tribunal or forum must promote the spirit, purport and objects of the Bill of Rights'.

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<sup>4</sup> Ibid, para 18.

[41] ESTA was enacted to give effect to section 25(6) of the Constitution, which provides:

**Property**

'25(6) A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress'.

[42] The Court is enjoined to request a report from a Probation Officer contemplated in section 1 of the Probation Services Act 116 of 1991 or an officer of the Department *or* any employee in the employment of the State, as may be determined by the Minister to interpret the statute in a manner suggested by the Applicant that would bring unbusinesslike results.

**Has the Applicant satisfied the requirements of a final interdict?**

[43] It is now an opportune time to ascertain whether the Applicant has met the requirements of the final for the application to succeed, all three requirements must be proven.

[44] The party seeking a final relief must first establish the existence of a clear or definite right. Whether an applicant has a clear right is a matter of substantive law.<sup>5</sup> Whether that right is clear is a matter of evidence. To establish a clear right, the applicant must prove on a balance of probability, facts which in terms of substantive law establish the right relied on.<sup>6</sup> It is common cause that a final interdict can only be granted in motion proceedings on common cause facts. Where there is a dispute of facts, the final interdicts are granted on the version of the respondent.

[45] The Applicant contends that the First Respondent's failure and refusal to provide it with the reasonable information that it has requested infringes on its right to state its case in the main action. The Applicant contends that it is at risk of not being able to convince this Court to grant the relief sought in the main action if it has to

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<sup>5</sup> *Minister of Law & Order, Bophuthatswana v Committee of the Church Summit of Bophuthatswana and Others* 1994 3 SA 89 (BG) at 98.

<sup>6</sup> LAWSA Vol. 11, 2<sup>nd</sup> Ed. 397.



proceed with a request for default judgment without being able to address the contents of the report.

[46] There is no merit in the Applicant's contention that by refusing to provide the information requested, the First Respondent has infringed its right to state its case in the main case. It is trite that a clear right is one that is palpable, tangible or real, as opposed to abstract or hypothetical.<sup>7</sup>

[47] The Rules governing the application of default judgment outline the procedure that must be followed when a party applies for judgment by default. What is required is that the party must present the evidence necessary to support the relief sought.

[48] How much weight will the default judgement court attach to this biased, unbalanced report? Asked the Applicant's counsel. The court might conclude that it is not just and equitable to grant eviction.

[49] The Applicant's fear is unfounded. It is trite that the Probation Officers Report is not evidence, and it is not intended to be treated as such. Dealing with the purpose of the Probation Officer's Report, the Supreme Court of Appeal in *Goedverwachting Farm (Pty) Ltd v Roux and Others*<sup>8</sup> held that:

'In terms of s 9(2)(c) of ESTA a court is compelled to obtain a report to ensure the 'conditions for an order for eviction in terms of section 10 or 11 have been complied with'. Section 26(3) of the Constitution requires a court to consider all relevant circumstances before ordering an eviction. The probation officer's report is merely a mechanism to place information before a court to enable it to comply with its constitutional obligations. The content of the report enables the court to get an indication of what constitutional rights are implicated, including any rights to education of the children on the property; the availability of alternative accommodation to the occupier; and any other hardships that the eviction may cause the occupier. Thus, the role of a probation officer's report is to assist the court in determining whether an eviction would be just and equitable in the circumstances of a particular case.'<sup>9</sup>

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<sup>7</sup>*Interwaste (Pty) Ltd and Others v Coetzee and Others (23921/2012) GPJ (Unreported)*

<sup>8</sup>*Goedverwachting Farm (Pty) Ltd v Adriaan Johannes Roux and Others (641/2023) [2024] ZASCA 83 (31 May 2024).*

<sup>9</sup> *Ibid*, para 15.

[50] The Applicant contends that it is it has a right to proceed with default application in terms of its statement of claim however without this information, the First Respondent is infringing its right to make a proper case. There are no merits in this submission. Rule 58(5) is clear that "If any party applies for default judgement, he must present evidence to support the judgement.

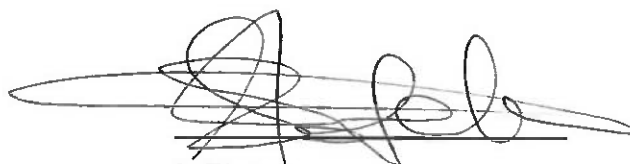
[51] There nothing precluding the Applicant from proceeding to set the matter down on unopposed motion. And for setting forth its case and evidence in support of its application for default judgement. In one of the letters addressed to the respondents, the Applicant also stated that if the Department is unable to provide the answers hereto or is unwilling to do so, *then it must furnish the name of the Probation Officer who compiled the Report, their employment particulars and where they are to be found to secure their attendance in Court to testify to the issues not canvassed in the Report.*

[52] In its papers, the Applicant stated that the First Respondent's details and employment particulars were needed in order to secure her attendance in Court and testify on those issues not canvassed in the Report. The Applicant would have a chance to cross-examine the First Respondent.

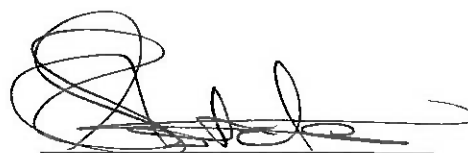
[53] It is my considered view that applicant the Applicant has failed to establish a clear right, I consider it unnecessary to consider the rest of other requirements. Regard being had to the circumstances of this case and the discussion above, this application must fail.

[54] In the result, the following order is made:

1. The application is dismissed with no order as to costs.

A handwritten signature in black ink, appearing to read 'L Flatela', written over a horizontal line.

**L Flatela**  
**Judge of the Land Claims Court**



**L Flatela**  
**Judge of the Land Claims**  
**Court**

Date of hearing: 01 February 2024

Date of judgment: 12 August 2024

Appearances

For the Applicant: Adv. JE Kruger  
Instructed by: Moolman & Pienaar Inc

For the First and  
Second Respondents: Adv D Mosoma  
Instructed by: State Attorney, Pretoria